Supreme Court of the United States

(OCTOBER TERM, 1944)

No. 833

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY,
a corporation,
Appellant,

VERSUS

JESS G. READ, the Insurance Commissioner of the State of Oklahoma, ET AL.,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIEF OF APPELLANT

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March, 1945.

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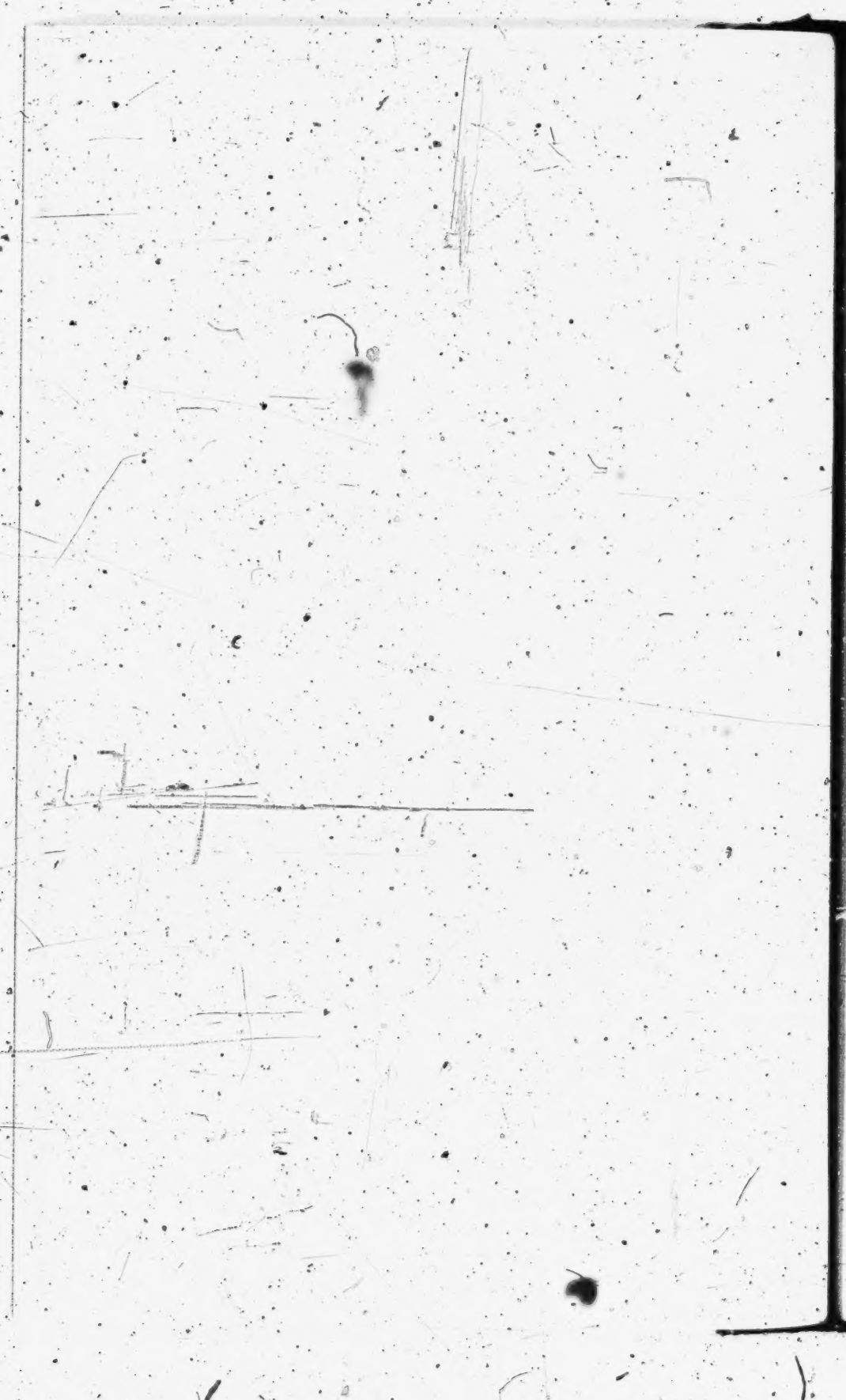

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Lincoln National Life Ins. Co. v. *Read, Ins. Com'r, et al.*, Vol. 15, No. 36, p. 1315, official advance sheets of opinions of Supreme Court of Oklahoma (The Journal, published by Oklahoma Bar Association, November 25, 1944).

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

I. The statutory provision sustaining the jurisdiction of this Court is Section 237(a) of the Judicial Code as amended [Tit. 28, Sec. 344(a) U. S. C. A.]

—Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282, 66 L. Ed. 239;

Jett Bros. Distilling Co. v. *Carrollton*, 252 U. S. 1, 64 L. Ed. 421;

Western Turf Assn. v. *Greenberg*, 204 U. S. 359, 51 L. Ed. 520.

II. The statutes of the State of Oklahoma, the validity of which are drawn in question, are:

Section 1, Chapter 1a, Title 36, page 121, Session Laws of Oklahoma 1941 (Tit. 36, Okla. Stat. 1941, Sec. 104), approved and in force April 25, 1941 (R. 24, 49).

Section 10478, Okla. Stat. 1931 (substantially the same as said 1941 statute except rate of tax is 2% instead of 4%) (R. 25, 49).

Sections 1 and 2, Article XIX of the Constitution of Oklahoma (R. 24, 29, 49).

III. Date of entry of judgment to be reviewed: November 21, 1944 (R. 50).

IV. Date petition for appeal presented: December 12, 1944 (R. 68).

V. Date order allowing appeal: December 12, 1944 (R. 74).

VI. The statutes of Oklahoma above mentioned deny to appellant the equal protection of the laws and deprive appellant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States (R. 28-29).

Protest of appellant before Insurance Commissioner (R. 7, 11).

Allegations contained in first cause of action in petition of appellant in District Court of Oklahoma County, Oklahoma (R. 23-30).

VII. Ruling of trial court against the contentions of appellant set forth in the preceding paragraph (R. 34).

VIII. Ruling of the Supreme Court of Oklahoma against the contentions of appellant set forth in paragraph VI above (R. 49).

Judgment of the Supreme Court of Oklahoma affirming the decree of the trial court denying these constitutional rights to appellant (R. 67).

IX. The provision under which jurisdiction is invoked is Section 1 of Amendment XIV to the Constitution of the United States.

X. The Federal questions involved are substantial in character.

—*Hanover Fire Ins. Co.* v. *Harding*,
272 U. S. 494, 71 L. Ed. 372;

Southern Railway Co. v. *Greene*,
216 U. S. 400, 54 L. Ed. 536;

Concordia Fire Ins. Co. v. *Illinois*,
292 U. S. 535, 78 L. Ed. 1411;

Galveston, H. & S. A. R. Co. v. *Texas*,
210 U. S. 217, 227, 52 L. Ed. 1031, 1037;

St. Louis Cotton Compress Co. v. *Arkansas*,
260 U. S. 346, 358, 67 L. Ed. 297, 299;

Power Mfg. Co. v. *Saunders*,
274 U. S. 490, 71 L. Ed. 1165, 1169;

Quaker City Cab Co. v. *Commonwealth of Pennsylvania*,
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271 U. S. 583, 70 L. Ed. 1101.

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THE LINCOLN NATIONAL LIFE INSURANCE COMPANY,
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BRIEF OF APPELLANT

STATEMENT OF THE CASE

This is an appeal under Section 237(a) of the Judicial Code, 28 U.S.C.A., Sec. 344(a), from the judgment of the Oklahoma Supreme Court, wherein it is held that the laws of Oklahoma under which a tax is imposed on gross premiums collected by foreign insurance companies in Oklahoma do not violate the Fourteenth Amendment to the Federal Constitution, and do not deny such companies

the equal protection of the laws, though no like or any other similar tax is exacted from competing domestic insurance companies.

The discriminatory nature of the tax is admitted, which brings into focus the controlling questions, viz: Is the tax under consideration, in substance and effect, a fee or condition precedent to admission of foreign corporations into the State and outside the guaranties of the Fourteenth Amendment, or is it a tax that must conform to the equal protection clause of the Fourteenth Amendment?

The Oklahoma Supreme Court (R. 48-68) sustained the constitutionality as construed and applied to appellant of Section 1 and 2, Article XIX of the Constitution of Oklahoma (*Appendix, p. i*), Section 10478, Oklahoma Statutes 1931, hereinafter referred to as the 2% statute (Section 22, General Insurance Act of 1909, as amended, *Appendix, p. viii*), and Section 104, Title 36, Oklahoma Statutes 1941, hereinafter referred to as the 4% statute (Sec. 1, Ch. 1a, Title 36, Session Laws of Oklahoma, 1941, *Appendix, p. xii*). The former 2% statute and the present 4% statute are identical in all material respects, except the rate of tax is by the present statute increased from 2% to 4%.

Appellant reported the gross premiums collected in Oklahoma during the calendar year 1941 and paid under protest the tax required by the 4% statute, and brought this suit to recover the amount so paid (R. 23). Appellees filed their demurrer to appellant's petition (R. 33), and the cause was heard and decided in the trial court upon

the third ground of said demurrer, viz: That the petition does not state facts sufficient to constitute a cause of action (R. 33-34).

Three causes of action are alleged in the petition, all of which were finally determined by the judgment of the Oklahoma Supreme Court (R. 67-68). The second and third causes of action do not raise Federal questions and are alleged only in the event of a judicial determination that either the 2% or the 4% statute is constitutional (R. 30-31).

The question presented here is one arising alone upon the legal conclusions proper to be drawn as to the effect of the 2% and 4% statutes from the facts alleged in appellant's petition and the operation of such statutes as construed and applied by the Supreme Court of Oklahoma.

The allegations which present the Federal questions here are contained in the first cause of action in appellant's petition and may be stated briefly: The provisions of the present 4% statute (R. 24-25). The provisions of the former 2% statute (R. 25). The provisions of Section 1, Article XIX of the Oklahoma Constitution (R. 29-30). Appellant is an Indiana life insurance corporation (R. 23). In 1919 it qualified and was admitted to do business in Oklahoma. It has thereafter continued to do business in Oklahoma and has paid each year an annual license fee of $200.00 (R. 27-28). Appellant has built up good will and has established a valuable life insurance business in Oklahoma, the assets of which are without use or value

to others. Appellant would be deprived of the equal protection of the laws and of its property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution, if it were deprived of the privilege of doing business in Oklahoma or subjected to the taxes threatened by the 4% statute and the acts of appellees (R. 28). Domestic insurance corporations competing with appellant in Oklahoma are not required to pay the onerous tax of 4% or at any other rate upon the premiums collected by them in Oklahoma. There is no material distinction between appellant and competing domestic insurance corporations and no reasonable basis for classifying them separately. The 4% statute was enacted as a revenue-producing measure to provide general funds for the operation of the State Government and the State Firemen's Relief and Pension Fund. The 4% statute is not a regulatory measure enacted under the police power, nor are the funds demanded commensurate with the expense of regulating the affairs of foreign insurance corporations. The 4% statute discriminates between appellant and competing domestic corporations, to the advantage of the latter and to the prejudice of appellant, and denies to appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States (R. 28-29). Section 1, Article XIX of the Oklahoma Constitution attempts to exact as a condition on foreign insurance companies engaging in business in Oklahoma that the rights of such corporations guaranteed under the Federal Constitution be waived (R. 29-30). Appellant reported,

as required by law, the gross premiums collected by it in Oklahoma during the calendar year 1941 in the amount of $156,897.19, and paid to the appellee, Insurance Commissioner, the sum of $6,238.94, representing a tax of 4% on said gross premiums less a lawful deduction of $923.80 covering dividends paid to policyholders (R. 25-27). Appellant paid said taxes involuntarily and pursuant to the demands of appellee, Insurance Commissioner, to avoid the statutory forfeiture and penalties, revocation of its agents' certificates of authority, its debarment from doing business in Oklahoma, and threatened deprivation and loss of its rights, interests, investments, and property in Oklahoma (R. 27). At the time appellant paid such taxes it served notice of protest according to law upon appellees (R. 7, 11, 27).

The tax imposed by the statutes in question is not a substitute for or in lieu of ad valorem tax upon personal property of a foreign insurance company. *New York Life Ins. Co.* v. *Board of Com'rs of Oklahoma Co.*, 155 Okla. 247, 9 Pac. (2d) 936.

The discriminatory character of the gross premium statute, *supra*, and its revenue-producing purpose stand as admitted upon the pleadings, and further accord in that regard is revealed in the briefs of appellant and appellees in the Supreme Court of Oklahoma (R. 41-43). The following is found in said brief of appellees:

> "* * * in order that the Court may not misunderstand defendants' conception of the discriminatory character of the premium tax involved here, both be-

fore and after it was increased in 1941 from two per cent to four per cent, we desire to state that we fully agree with plaintiff's statements on page 18 of its brief, (same being in relation to matters of common knowledge in which the Court may take judicial notice) that

"'the tax of 4% of all premiums, less proper deductions, collected by the plaintiff insurance company in the State of Oklahoma, is not collected on like premiums of competing domestic insurance companies and the only tax collected from said latter companies not collected from the plaintiff insurance company is a state income tax amount to approximately one-twentieth of said 4% tax (or one-tenth of said 2% tax).'

And

"'The expenses of the State Insurance Department since statehood until December 31st, 1941, have been approximately 3.55% of the amount collected from the former 2% premium tax and other receipts, and since said latter date said expenses have been approximately 2% of the amount collected from the present 4% premium tax and other receipts.'"

The General Insurance Act of 1909 governs and regulates the conduct of domestic as well as foreign insurance companies doing business in Oklahoma. The pertinent provisions of that Act as carried forward into the Oklahoma Statutes of 1941 appear in the Appendix at pages iii-xi. Section 22 of that Act imposes the 2% gross premium tax which was carried forward in Section 10478, Oklahoma Statutes 1931 (*Appendix, p. viii*).

Annual licenses issued to domestic insurance companies as well as foreign insurance companies expire on the last day of February next after the date of their issuance. The following conditions precedent are prescribed for admission of a foreign insurance company into Oklahoma, to-wit:

1. Payment of the entrance fee ($25.00 to $200.00, depending on the type of company), as provided by Section 2, Article XIX of the Constitution (*Appendix, p. i*).

2. Satisfy the Insurance Commissioner that the company is qualified as prescribed by Section 11 of the General Insurance Act of 1909 (*Appendix, p. iii*).

3. Compliance with the conditions of admission prescribed by Section 18 of the General Insurance Act of 1909, namely, (a) file a copy of its charter and statement of financial condition; (b) satisfy the Insurance Commissioner of its legal organization in the foreign state and that designated securities are on deposit with proper officials; (c) that it has a paid-up or guaranty capital, or surplus, of the prescribed amount; (d) appoint the Insurance Commissioner as its service agent (*Appendix, p. v*).

The trial court entered its judgment wherein: It made express findings of fact as to the manner in which the statutes in question operate and apply. It expressly found

that neither Section 2, Article XIX of the Oklahoma Consituation, the 2% statute, the 4% statute, nor the construction or application thereof by the appellee, Insurance Commissioner violate the Fourteenth Amendment. It sustained appellees' demurrer and dismissed the case (R. 33-36).

The Supreme Court of Oklahoma on the appeal affirmed the decree of the trial court in dismissing appellant's first cause of action, and held that the imposition of the tax as provided by Sections 1 and 2, Article XIX of the Oklahoma Constitution, the 2% statute, and the 4% statute, does not violate the Fourteenth Amendment (R. 49, 67).

The operation and characterization of the gross premium tax laws in question are revealed in the express findings of the Oklahoma Supreme Court as to the uniform administrative practice since 1909 (R. 56-57) and the following quotations from its opinion:

> "It is clear that payment of such tax at the end of the licensing year was intended. The reason is that the amount of such tax is dependent on the amount of premiums collected during the taxing year and could not be determined until the end of such year. The tax imposed is clearly a privilege tax. * * * It is payable at the end of the year during which the privilege is granted by the State and exercised by the insurance company. * * *" (R. 59).
>
> "In the case at bar, the State exacts payment on or before the last day of February of each year of a valid privilege tax, based upon gross premiums collected for the privilege of doing business in this State

during the license year, expiring on the date upon which the tax is required to be paid, and also requires a showing of timely payment of such tax as a condition precedent to the issuance of a license for the ensuing year" (R. 62).

The effect of the decision of the Supreme Court of Oklahoma in the case at bar is to sustain a tax law enacted for revenue purposes, which discriminates heavily against foreign insurance companies, even though such law operates and applies each year after said companies receive their annual licenses to transact business in Oklahoma. Such discrimination is erroneously justified and excused on the ground that the tax is paid for the privilege of doing business in Oklahoma.

The present case collaterally affects much more than the amount directly in issue. Under the present rate of 4% the tax law in issue exacts approximately $2,160,000.00 per year from foreign insurance companies (R. 43).

SPECIFICATION OF ERRORS

Assignments of Error 1 to 11, both inclusive (R. 70-74), are here relied upon. They are naturally grouped as follows:

(a) Sections 1 and 2 of Article XIX of the Constitution of the State of Oklahoma, Section 10478, Oklahoma Statutes 1931, and 36 Oklahoma Statutes 1941, Section 104, and each of them, are unconstitutional in that they deny to appellant the equal protection of the laws and take its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

(b) The enforcement and collection of the tax by the Insurance Commissioner of the State of Oklahoma, purporting to act pursuant to the provisions of the aforementioned laws, is unconstitutional upon the same grounds.

(c) The judgment and the opinion of the Supreme Court of Oklahoma are in error in holding the aforementioned laws valid and the enforcement of the tax here for review valid, notwithstanding the provisions of the Fourteenth Amendment.

SUMMARY OF ARGUMENT

I.

This Court will accept the operation of the tax law and its characterization as determined by the state court, but will determine for itself whether, in the light of such operation, its effect would involve a violation of the Federal Constitution.

(a) Excise Taxes Which Include Privilege, License, Occupation, Business, and Franchise Taxes, Are to Be Distinguished From Admission or License Fees.

(b) Neither the Form in Which the Taxing Scheme Is Cast, Nor the Privilege Tax Characterization Put Upon It Is Controlling.

(c) This Court Regards Substance Rather Than Name of Form, and Finds the Controlling Test in the Operation and Effect of the Tax.

II.

If the gross premium tax infringes upon guaranties under the Fourteenth Amendment to the Federal Constitution, it may not be validated by claims of waiver under Section 1, Article XIX of the Oklahoma Constitution, upon entry into the State, or by claim of sovereign right to exclude foreign corporations.

(a) The Conditions Imposed by Section 1, Article XIX of the Oklahoma Constitution (*Appendix, p. i*) Violate the Federal Constitution Insofar as It Requires Appellant to Submit to a Tax Law That Is Repugnant to the Federal Constitution.

(b) A Foreign Corporation Entering the State by Permission Is Not Obligated to Comply With, or Estopped From Objecting to, a Tax Law Which Conflicts With the Federal Constitution.

III.

The operation of the Oklahoma Gross Premium Tax Statutes effectively reveals that the exaction in question is a tax, and that such exaction is neither a fee nor condition precedent to the permissive entry of foreign insurance companies into the State.

(a) The Gross Premium Tax in Question Operates and Applies Each Year After the Issuance of the Annual License. It Is a Tax for the Past and Not a Fee for the Future. (See Analysis of Act in Argument.)

(b) A Foreign Insurance Company Is Admitted Into the State and Put on a Level With Domestic Insurance Companies by Compliance With Valid Conditions Precedent.

(c) The Valid Conditions Precedent in the Hanover Case Required That Before Admission Into Illinois the Foreign Insurance Company Have Sufficient Capital; Appoint a Service Agent; File Its Charter and Statements of Its Business and Financial Condition; Deposit Certain Securities, and Pay the Tax Required by the 1919 Gross Premium Tax Law of Illinois. (See Analysis in Argument.)

(d) The Oklahoma Supreme Court, in Attempting to Distinguish the Hanover Case From the Case at Bar, Erroneously Held That the 1919 Law of Illinois and the Oklahoma Gross Premium Tax Law Are Almost the Same. The Said Illinois Law Exacts a Fee Before Admission While the Oklahoma Law Exacts a Tax After Admission. (See Analysis in Argument.)

(e) The Valid Conditions Precedent Under the Laws of Oklahoma Require That Before Admission a Foreign Insurance Company Pay the Annual License Fee ($25.00 to $200.00, Depending on Class of Company).

and Comply With Certain Regulatory Requirements Similar to Those Outlined in the Hanover Case. (See Analysis in Argument.)

(f) A Foreign Corporation Licensed for One Year at a Time Cannot Be Required to Show Past Compliance With a Tax Law That Violates the Federal Constitution, Under the Guise That the Payment of the Tax Is a Condition Precedent to the Renewal of Its Annual License.

(g) The Case of *Fire Association of Philadelphia* v. *New York*, 119 U. S. 110, 30 L. Ed. 342, Cited and Approved by the Oklahoma Supreme Court, Involved a License Fee Paid for the Future.

(h) The State May Not Relieve Itself From Granting the Equal Protection of the Laws by Providing That Failure to Comply With a Tax Law During the Period or at the End of the Period for Which the License Runs Justifies a Revocation of the License or a Refusal to Grant a Renewal License.

IV.

The Gross Premium Tax Laws of Oklahoma deny to appellant the equal protection of the laws in violation of the Fourteenth Amendment. Payment of the invalid tax imposed by such laws cannot be made a valid condition precedent to the issuance of renewal licenses.

(a) The First Two Paragraphs of Section 2, Article XIX of the Oklahoma Constitution (*Appendix*, p. i) Prescribe the Fee to Be Paid Before Admission or Issuance of the Annual License. The Last Paragraph of That Section Applies the Gross Premium Tax After Admission and Issuance of Each Annual License.

(b) The Tax Law in Question, Like the Invalid Net Receipts Tax Law of Illinois in the Hanover Case, Applies After Foreign Insurance Companies Are Received Into the State, and Must Therefore Conform to the Equal Protection Clause of the Fourteenth Amendment.

(c) That the Oklahoma Gross Premium Tax in Question Is for Revenue Purposes and Discriminates Heavily Against Foreign Insurance Companies Is Unquestioned.

(d) The Tax Law in Question Denies to Appellant the Equal Protection of the Laws in Violation of the Fourteenth Amendment and, Being an Invalid Tax, Is Likewise Invalid as a Fee or Condition Precedent to the Issuance of Renewal Licenses.

ARGUMENT

I.

This Court will accept the operation of the tax law and its characterization as determined by the state court, but will determine for itself whether, in the light of such operation, its effect would involve a violation of the Federal Constitution.

The leading case on the questions presented in the case at bar is *Hanover Fire Ins. Co.* v. *Harding* (reported in L. Ed. as *Hanover Fire Ins. Co.* v. *Carr*), 272 U. S. 494, 71 L. Ed. 372, 47 Sup. Ct. 179 (1926). It is thoroughly germane and in point, and is supported by many decisions of this Court which are therein cited. For convenience and brevity in repeated references to that case we shall hereinafter refer to it as the "*Hanover case*" and the applicable portions of the opinion therein by page numbers in 272 U. S.

The Oklahoma Supreme Court has ruled that the tax in question is clearly a privilege tax (R. 59).

Whether the term used is "occupation tax," "business tax," "privilege tax," "license tax," or "franchise tax," it remains an excise charged for the privilege of doing business and all of such taxes are of the same essential character. Witness Cooley on Taxation:

> "Taxes are either (1) capitation or poll taxes, (2) taxes on property, or (3) excise taxes. The first two are generally classified as direct taxes and the third as indirect taxes. Another classification is as (a) specific and (b) ad valorem." *Cooley Taxation* (4th ed.), Vol. 1, page 118.
>
> "An excise tax, using the term in its broad meaning as opposed to a property tax, includes taxes sometimes designated by statutes or referred to as privilege taxes, license taxes, occupation taxes, and business taxes. There is no clear line of demarcation between so-called 'license,' 'occupation,' and 'privilege' taxes. In the case of corporations such taxes are often referred to as franchise taxes.
>
> "Sometimes the term 'license fee' is used to distinguish an exercise of the police power from an exercise of the taxing power referred to as a 'license tax'." *Cooley Taxation* (4th ed.), Vol. 1, pp. 129-131.

Whether the exaction is a valid excise tax, as distinguished from a valid license or admission fee, involves the inquiry regarding the operation and effect of the tax law, which we shall discuss later.

In the *Hanover case* this Court had for consideration the constitutionality of a statute of Illinois which imposed a tax on the net receipts of a class of foreign insurance companies. Competing domestic insurance companies paid no tax on net receipts. The Supreme Court of Illinois for many years had held that the net receipts tax was a tax on personal property. In practice net receipts had been treated as personal property and their assessment was by equalization and debasement reduced from full value as all other personal property to 30% of fair cash value. In 1921 and again in 1923 the Supreme Court of Illinois held that said net receipts tax was a tax on the business of insurance and that it was not a tax on personal property, which was subject to debasement. *People ex rel Chicago* v. *Kent*, 300 Ill. 324, 133 N. E. 276; *People ex rel Chicago* v. *Barrett*, 309 Ill. 53, 139 N. E. 903. In 1925 the Supreme Court of Illinois ruled that said net receipts tax was a tax on the amount of business done, and for the privilege of continuing in such business, and was not to be distinguished from a privilege tax. It sustained the assessment of net receipts on the basis of 100% thereof. *Hanover Fire Ins. Co.* v. *Carr*, 317 Ill. 366, 148 N. E. 23. Upon writ of error to review the decree in the latter case, this Court referred to the tax as an occupation tax (p. 516). In holding that the tax law denied the equal protection of the laws, this Court declined to permit the form of the tax or its characterization by the state court to control in the determination of the Federal question, and said (pp. 509-510):

"It is true that the interpretation put upon such a tax law of a state by its Supreme Court is binding upon this Court as to its meaning, but it is not true that this Court in accepting the meaning thus given may not exercise its independent judgment in determining whether with the meaning given, its effect would not involve a violation of the Federal Constitution. As said by this Court in *St. Louis-Southwestern R. Co. v. Arkansas*, 235 U. S. 350, at page 362, 59 L. Ed. 265, 271, 35 Sup Ct. Rep. 99, where the question was whether a tax law violated the equal protection clause of the Fourteenth Amendment:

"'Upon the mere question of construction we are, of course, concluded by the decision of the state court of last resort. But when the question is whether a tax imposed by a state deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the state court. We must regard the substance rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the state'."

That view has been followed consistently. *Staraasli v. Minnesota*, 283 U. S. 57, 75 L. Ed. 839; *City of Greenville v. W. G. Query*, 286 U. S. 472, 476, 76 L. Ed. 1232, 1236.

Following the decision of this Court in the *Hanover* case, the Supreme Court of Illinois receded from the position that it had taken since 1921, namely, that the said tax was an occupation or privilege tax, and returned to its original ruling that the tax was a property tax. *Hanover Fire Ins. Co. v. Harding*, 327 Ill. 590, 601, 158 N. E. 849;

People v. *Franklin Nat. Ins. Co.*, 343 Ill. 336, 175 N. E. 431. Thereafter, in *Concordia Fire Ins. Co.* v. *Illinois*, 292 U. S. 535, 78 L. Ed. 1411, the assessing officers and the Supreme Court of Illinois applied said tax law of Illinois as subjecting the net receipts of a foreign fire insurance company, by reason of being such, to a tax burden of 66⅔% greater than that laid on other personal property. This Court in there holding that said law as so applied violated the equal protection clause of the Federal Constitution said (p. 545):

> "It is essentially the same character of arbitrary and prejudicial discrimination that was condemned as a denial of the equal protection of the laws in *Hanover F. Ins. Co.* v. *Harding (Hanover F. Ins. Co.* v. *Carr)*."

And (p. 552):

> "This court did not hold in *Hanover F. Ins. Co.* v. *Harding (Hanover F. Ins. Co.* v. *Carr)* * * * that if the tax was an excise, it would be void for that reason, though the assessment were to be debased. All that was held was that calling it an excise would not save it if the benefit of debasement was withheld in a discriminatory way. By the same token, calling it a property tax does not condemn it if debasement is allowed."

The foregoing cases therefore reveal that the net receipts tax law of Illinois had been characterized formerly as a property tax, later as a privilege or occupation tax (such was its name when the *Hanover case* was decided), and finally as a property tax. The provisions of said law during the entire period remained the same. This Court

in the *Hanover* and *Concordia cases* accepted the characterization placed on said law by the Illinois Supreme Court, but determined the question of its validity from the manner in which it operated and was applied.

In the case of *Galveston H. & S. A. R. Co.* v. *Texas*, 210 U. S. 217, 227, 52 L. Ed. 1031, 1037, which involved the validity of a Texas statute imposing an annual tax "equal to 1% of its gross receipts" on each railroad lying wholly within that state, the railroad contended that the tax was a burden on interstate commerce, and invalid, so far as it was based on or was measured by receipts derived from interstate transportation. That view was sustained. The Court said:

> "Neither the state court nor the legislature by giving the tax a particular name or by the use of some form of words, can take away our duty to consider its nature and effect."

Followed in *Choctaw O. & G. R. Co.* v. *Harrison*, 235 U. S. 292, 298, 59 L. Ed. 234, 237.

In *St. Louis Cotton Compress Co.* v. *Arkansas*, 260 U. S. 346, 348, 67 L. Ed. 297, 299, a gross premium tax law of Arkansas characterized as an occupation tax was questioned and this Court, in testing the question of its validity, said:

> "The name given by the state to the imposition is not conclusive."

To the same effect see *Quaker City Cab Co. v. Commonwealth of Pennsylvania*, 277 U. S. 389, 72 L. Ed. 927; *James v. Dravo Contracting Co.*, 302 U. S. 134, 157, 158, 82 L. Ed. 155, 171.

The effect of the foregoing cases is to impose upon this Court the duty of determining whether the Oklahoma gross premium tax, in the light of its operation as determined by the Oklahoma Supreme Court, is in effect a license fee or regulatory measure outside the scope of the Fourteenth Amendment, or one for revenue that must conform to the equal protection clause of the Fourteenth Amendment. In so doing, this Court is not bound by mere forms, nor will it be misled by mere pretenses. It is at liberty, and indeed is under a solemn duty, to look at the substance of things, whenever it enters upon the inquiry whether the statutes in question here violate the Federal Constitution.

II.

If the gross premium tax infringes upon guaranties under the Fourteenth Amendment to the Federal Constitution, it may not be validated by claims of waiver under Section 1, Article XIX of the Oklahoma Constitution, upon entry into the State, or by claim of sovereign right to exclude foreign corporations.

Section 1, Article XIX of the Oklahoma Constitution provides that no foreign insurance company shall be granted a license until it shall have agreed to pay all taxes and fees as may at any time be imposed, and provides that a refusal to pay such taxes or fees shall work a forfeiture of such license (*Appendix, p. 1*).

The Supreme Court of Oklahoma in construing that provision of the Oklahoma Constitution (R. 58-59) holds that the premium tax imposed by the latter part of Section 2, Article XIX of the Constitution of Oklahoma (*Appendix, p. ii*) and the premium tax imposed by Section 10478, Oklahoma Statutes 1931 (Section 22, General Insurance Act of 1909—*Appendix, p. viii*) and the 1941 Amendment, which changed the rate of the tax to 4% (Section 1, Oklahoma Gross Premium Tax Act of 1941—*Appendix, p. xii*), is the tax imposed by law referred to in Section 1, Article XIX of the Oklahoma Constitution. In Syllabus No. 7 of the opinion (R. 49) said Court holds that the imposition of the gross premium tax on foreign insurance companies as provided by said sections of the Oklahoma Constitution and statutes does not violate the Fourteenth Amendment of the Federal Constitution.

In the *Hanover case*, after reference was made to the decisions holding that a State may exclude foreign corporations arbitrarily, or impose such conditions as it will upon their engaging in business within its jurisdiction, this Court said (p. 507):

> "But there is a very important qualification to this power of the state, the recognition and enforcement of which are shown in a number of decisions of recent years. That qualification is that the state may not exact as a condition of the corporation's engaging in business within its limits that its rights secured to it by the constitution of the United States may be infringed."

That qualification to the power of the State as announced in the *Hanover case* is illustrated in many cases which are cited and classified in that case (pp. 507, 508), viz: In cases involving the commerce clause; in cases involving the constitutional right of a foreign corporation to remove suits to the Federal courts; in cases involving a tax law subjecting foreign corporations to a tax on their property within as well as without the State; and in cases where a tax law denies to a foreign corporation the equal protection of the laws.

That pronouncement in the *Hanover case* has been followed consistently in many decisions of this Court wherein it is further established that a foreign corporation seeking and obtaining permission to do business in a state does not thereby become obligated to comply with, or estopped from objecting to, any provision in the state statutes which conflicts with the Constitution of the United States.

—*Power Mfg. Co.* v. *Saunders*, 274 U. S. 490, 496, 497, 71 L. Ed. 1165, 1169;

Quaker City Cab Co. v. *Commonwealth of Pennsylvania*, 277 U. S. 389, 400, 401, 72 L. Ed. 927, 929;

Foster-Fountain Packing Co. v. *Haydel*, 278 U. S. 1, 13, 73 L. Ed. 147, 154;

United States v. *Chicago, M. St. P. & P. Ry. Co.*, 282 U. S. 311, 328, 75 L. Ed. 359, 366;

Washington ex rel Bond & G. & T. v. *Superior Court*, 289 U. S. 361, 365, 77 L. Ed. 1256, 1260;

Phillips Petroleum Co. v. *Jenkins*, 297 U. S. 629, 634, 80 L. Ed. 943, 947;

Bacardi Corp. v. *Domenech*, 311 U. S. 150, 166, 85 L. Ed. 98, 108.

It is made clear by the foregoing authorities that if the statutes of Oklahoma imposing a tax on gross premiums of foreign insurance companies contravene the Federal Constitution, Section 1, Article XIX of the Constitution of Oklahoma, as construed and applied by the Oklahoma Supreme Court, is likewise invalid.

III.

The operation of the Oklahoma Gross Premium Tax Statutes effectively reveals that the exaction in question is a tax, and that such exaction is neither a fee nor condition precedent to the permissive entry of foreign insurance companies into the State.

Analysis of the Operation of the Oklahoma Gross Premium Tax

It is made clear by the opinion of the Oklahoma Supreme Court (see our statement of the case) that when a foreign insurance company enters the State and is permitted to do business for the first time, the license issued to it expires on the last day of February following such entry; that business must be done and premiums collected in the State before the premium tax can apply; that the tax applies to business done each year after the annual license is issued; that the tax is paid at the end of each license year for the annual privilege that expires at the time of such payment. The foreign insurance company is

not relieved from its obligation to pay the tax if it withdraws from the State at the end of its first year or any subsequent license year. The obligation to pay the tax exists whether such corporation withdraws from the State when the tax is due or renews its annual license. It is a tax for the past and is not a license fee for the future. If such corporation on payment of the tax does not withdraw from the State but desires to renew its license, it must then as a condition precedent to the issuance of a renewal license show that it has paid the tax.

(a) A Foreign Insurance Company Is Admitted Into the State and Put on a Level with Domestic Insurance Companies by Compliance with Valid Conditions Precedent.

We shall first give consideration to our contention that, by reason of the manner in which the statutes in question operate and apply, the exaction thereunder is a tax which must conform to the equal protection clause of the Federal Constitution. We shall then show that an *invalid tax* cannot be converted into a *valid license fee* or condition precedent to the issuance of renewal licenses.

Valid Conditions Precedent in the "Hanover Case."

The *Hanover case* reveals that by Section 22 and other sections of the Act of 1869 of the State of Illinois (of which Section 30 there in question was a part), before admitting foreign insurance companies into the State, required that such companies have a prescribed amount of capital; ap-

point a service agent in the State; file a copy of its charter and a statement of its financial condition and last annual report; and deposit certain securities within the State. It further required annual certificates or licenses to transact business and subjected anyone violating the act to a penalty not exceeding $500.00. It required such companies to make annual reports of their condition and affairs and the Insurance Superintendent was given authority to investigate the affairs of such companies and, if unsound, to close up the business of the company (pp. 502-503).

It is further revealed in that case that Illinois in 1919 imposed upon foreign insurance companies a 2% gross premium tax which was complied with, while the net receipts tax under Section 30 of the Illinois Act of 1869 was questioned. The complainant foreign insurance company insisted that under the previous practice and proper construction of Section 30 as a property tax with due equalization and debasement, the tax assessed upon its net receipts should have been $2,155.24, if anything, rather than $7,184.18. The Supreme Court of Illinois affirmed the decree of the Superior Court, which denied equalization and debasement of the net receipts as personal property (pp. 503-505).

This Court reversed the judgment of the Illinois Supreme Court and held that the net receipts tax as construed and applied by the Illinois Supreme Court was a heavy discrimination in favor of domestic insurance companies and denied foreign insurance companies of the same class the equal protection of the laws (p. 516).

This Court pointed out in that case that in deciding the question whether a tax imposed by a state deprives a party of rights secured by the Federal Constitution, "the controlling test is to be found in the operation and effect of the law as applied and enforced by the state" (pp. 509-510); that an "admission fee" which a foreign corporation must pay to become a quasi citizen does not come within the inhibitions of the Fourteenth Amendment, "but after its admission, the foreign corporation stands equal and is to be classified with domestic corporations of the same kind" (p. 511). Then this Court, after reviewing the provisions of the Illinois law that were required to be complied with before the foreign insurance company there involved received its license, said:

> "By compliance with the valid conditions precedent, the foreign insurance company is put on a level with all other insurance companies of the same kind, domestic or foreign within the state, and tax laws made to apply after it has been so received into the state are to be considered laws enacted for the purpose of raising revenue for the state and must conform to the equal protection clause of the Fourteenth Amendment" (p. 515).

The Illinois net receipts tax (Section 30) which was there held invalid operated and applied after the issuance of the license to the foreign corporation there involved, and as said by this Court:

> "It is plain that compliance with Section 30 is not a condition precedent to permission to do business

in Illinois. The State Supreme Court concedes this, * * *" (p. 512).

That statement was made after the Court had dealt with the requirements hereinabove set forth constituting conditions precedent under the Illinois law, and as to such requirements the Court said:

> "The complainant insurance company complied with the requirements of Section 22 and other unrepealed sections of the Act of 1869 and paid the 2 per cent tax on its premiums received as provided by the Act of 1919" (p. 504).

The Illinois gross premium tax act of 1919 was not questioned in the *Hanover case*. Brief reference to that law was made in the opinion of this Court and its text is not there revealed, although its text was set forth in the briefs filed in that case. The operation and effect of that law obviously was understood by this Court and all counsel involved in the case. But without careful consideration of the manner in which said law operates, that case may be erroneously interpreted as upholding gross premuim tax laws irrespective of the manner in which they operate. That error is found in the opinion of the Oklahoma Supreme Court.

Whether a tax relates to net receipts, gross premiums, or any other subject of taxation, the controlling test of its validity is to be found in its operation and effect as applied and enforced by the State. That rule was applied to a

vehicle registration tax in *Storaasli* v. *Minnesota*, 283 U. S. 57, 75 L. Ed. 839. In *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 82 L. Ed. 155, this Court said (pp. 157-158):

> "As we have observed, the fact that the tax in the present case is laid upon the gross receipts, instead of net earnings, is not a controlling distinction."

In the opinion of the Oklahoma Supreme Court it was said that the *Hanover case* "may well be distinguished from the case at bar as to the tax there held to be invalid" (R. 60). The Oklahoma Supreme Court further pointed out that there was in the *Hanover case* no contention as to the validity of the Illinois gross premium tax law of 1919 (R. 60), and then said:

> "The 2% gross premium tax levied under the law in Illinois, almost the same as the Oklahoma law as construed by the department and the court below as a privilege tax or license tax, was upheld" (R. 62).

The Oklahoma Supreme Court further held that:

> "It is not essential that a privilege tax be paid before the exercise of the privilege. Payment may precede or follow the exercise of the privilege, depending upon which system the Legislature chooses to adopt" (R. 57).

We take no issue with the holding that a privilege tax may be paid after the exercise of the privilege, provided it does not violate the guaranties under the Fourteenth Amendment. We neither argue nor infer that the tax law in question is invalid because it is a privilege tax. The character of the tax is immaterial. The controlling test is to be found in the operation and effect of the law

as applied and enforced by the State. But if a privilege tax operates and applies after admission of a foreign corporation into the State, as did the net receipts tax in the *Hanover case*, it must conform to the equal protection clause of the Federal Constitution.

The Oklahoma Supreme Court apparently arrives at the conclusion that the Illinois gross premium tax law of 1919 and the Oklahoma gross premium tax statutes are almost the same without examining the text of the Illinois law or giving any consideration to the manner in which it operates. The only similarity between the two laws is that both are characterized as privilege tax laws and both relate to gross premiums. They are radically different in the manner in which they operate.

Analysis of the Operation of the 1919 Gross Premium Tax Law of Illinois.

The pertinent provisions of the said 1919 law of Illinois are shown on pages xiv-xv of the *Appendix*. By Section 6 thereof the statutory license year commenced on the first day of July of each year, and ended on the 30th day of June next thereafter. By Section 13 thereof, a foreign insurance company applying for admission into Illinois for the first time, was required, *before admission*, to pay a sum made certain by the formula prescribed. It could not be measured by gross premiums and be paid *before* the company was admitted for the first time. It was measured at the rate of $300.00 per annum for as many months as would elapse between the date of admission

and the end of the statutory licence year. Such payment was required for the license period commencing with the date of admission and ending at the expiration of the statutory license year. By Section 1 thereof, the annual 2% premium tax was measured on the gross amount of premiums received during the preceding calendar year. By Section 6 thereof said premium tax was due on the first day of July in each year, when the statutory license year commenced, and such payment was required for the statutory license year commencing on the first day of July in which it was due. Therefore, *before* a foreign company was first admitted into Illinois it paid a sum certain for the privilege of doing business during the fraction of the statutory license year that *followed* the payment of the tax and the issuance of the license. When it renewed its license it was then for the first time required to pay a tax measured on premiums previously collected in the State, for the privilege of doing business during the statutory license year *following* the issuance of the renewal. In both instances the payment was exacted for the license period that *followed* the issuance of the license. The tax did not apply to business done *after* the issuance of the annual license, but the law required all payments exacted thereunder to be made *before* the issuance of the license. If the foreign corporation withdrew from Illinois at the end of any license year in which it was issued a license, it had previously paid for the privilege enjoyed and owed no tax under the law. Such exaction, unlike the Oklahoma gross premium tax, is clearly a fee paid for the *future* and not a

tax paid for the privilege of having done business in the past. The exaction under the 1919 law of Illinois is technically a "license fee" or "admission fee," as distinguished from a "privilege," "occupation," "business," or "license" tax. That distinction is very material in determining whether a tax law violates the Federal Constitution. The license or admission fee operates and applies before the foreign company is admitted into the State and, as stated in the *Hanover case, supra,* any inequalities as between foreign and domestic companies in that regard do not come within the inhibitions of the Fourteenth Amendment.

The distinction is pointed out in *Atlantic Refg. Co. v. Virginia,* 302 U. S. 22, 32, 82 L. Ed. 24, 31, where it was said:

> "The exaction, although called in some of those cases a filing fee, was in each case strictly a tax; for it was imposed after the admittance of the corporation into the State."

It was made plain in the *Hanover case* that compliance with Section 30 was not a condition precedent to permission to do business in Illinois, because it applied after the admission of foreign insurance companies into the State. The Supreme Court of Illinois said, as quoted by the United States Supreme Court:

> "Compensation for that privilege should be based on the benefits actually derived from the business done under such privilege and such compensation must necessarily be assessed in some manner after the business is done and the benefits thereof received.

> Section 30 provides the method by which the amount of this compensation shall be determined and assessed" (p. 512).

It is obvious that both the Supreme Court of Illinois and the Supreme Court of the United States in the *Hanover case* properly conceived the elements involved in the requirements of the laws of Illinois constituting conditions precedent to entry into the State. They agreed on that question and their understanding in that regard is in accord with the general definition of the term "condition precedent":

> "At the common law, a condition is precedent when its fulfillment must precede the vesting of an estate or the accruing of a right. * * *." Webster's New International Dictionary, Second Edition, p. 556.

Valid Conditions Precedent Under Oklahoma Law.

Domestic and foreign insurance companies doing business in Oklahoma are subject to requirements relating to the business carried on; examinations and audits; revocation of licenses for non-compliance with the laws; appointment, liability, and punishment of agents; and maintenance of a business office in the State, as set forth in the General Insurance Act of 1909 (*Appendix, p. iii*). Those provisions of the laws of Oklahoma regulating the business of insurance are of the same type as provided by Section 22 and other sections of the original Illinois Act of 1869 as outlined in the *Hanover case* (pp. 502-503).

Domestic insurance companies of Oklahoma, as well as foreign insurance companies admitted into Oklahoma,

are required to file annual statements and to obtain annual licenses to do business as provided by Section 21 of the General Insurance Act of 1909 (*Appendix, p. vii*). Those regulations are not conditions of admission. Therefore, the requirement that annual licenses be issued both to domestic and foreign insurance companies does not set the stage at which foreign corporations are put on a level with domestic insurance companies. That stage is set by other requirements of the laws of Oklahoma hereinafter discussed.

Applying the rules announced in the *Hanover case*, the valid conditions precedent under the Oklahoma laws are the requirements that operate, apply, and are capable of being fulfilled before the admission of, or the issuance of a license to, a foreign insurance company. They are set forth in our statement of the case, and are of the same general nature as the conditions precedent outlined in the *Hanover case*. When such requirements are complied with, the Insurance Commissioner is directed under Section 21 of the General Insurance Act of 1909 (*Appendix, p. vii*) to issue the license.

(b) A Foreign Corporation Licensed for One Year at a Time Cannot Be Required to Show Past Compliance with a Tax Law that Violates the Federal Constitution, Under the Guise that the Payment of the Tax Is a Condition Precedent to the Renewal of its Annual License.

A means of circumventing the guaranties of the Federal Constitution would be employed in cases like the *Hanover case* and the one at bar, wherein the State issues

licenses to foreign companies for only one year at a time, if the State were permitted to enforce, under the guise of a condition precedent to the renewal of the annual license, a discriminatory tax based on benefits actually derived from business done and which must necessarily be assessed in some manner after business is done. The State in so manipulating the tax would be making past compliance with a tax law which violates the Fourteenth Amendment a condition precedent to a renewal of the license. The guaranties of the Federal Constitution would thus be manipulated out of existence, as pointed out in the language of this Court in the case of *Marion L. Frost et al.* v. *Railroad Comm. of the State of California*, 271 U. S. 583, 70 L. Ed. 1101 (decided June 7, 1926, and cited in the *Hanover case)* where on pages 593-594 it was said:

> "It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizens of rights guaranteed by the Federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is in-

conceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence."

This Court pointed out in the *Hanover case* that the Supreme Court of Illinois erroneously held that the complainant foreign insurance company was required to pay the net receipts tax in order to maintain and retain its right to do business in the State and to obtain a new license (pp. 512-515). This presents the questions: Whether an unequal and discriminatory tax which applies to business done by a foreign insurance company after it receives its license to do business in the State may be employed to debar it from continuing in business within the State? Whether an unequal and discriminatory tax which applies to business done by a foreign insurance company after its admission into the State may be employed as a condition precedent to a renewal of the annual license?

(The Philadelphia Fire Association Case)

The case of *Fire Association of Philadelphia* v. *New York* (1886), 119 U. S. 110, 30 L. Ed. 342, which was cited with approval in the opinion of the Oklahoma Supreme Court herein (R. 57), involved a retaliatory law of New York. The law was enacted in 1865 and as amended in 1875 provided that whenever the laws of other states should require any payment of New York corporations for taxes, license fees, etc., greater than required from similar companies of other states by the laws of New York, then all

companies of such states doing business in New York should pay to New York an equal amount for such taxes, license fees, etc.

Pennsylvania, by an act passed April 4, 1873, prohibited a foreign insurance company from doing business in Pennsylvania until it was granted a certificate of authority. It required such corporations that were authorized to transact business in Pennsylvania to report in January of each year the premiums received by such companies during the preceding calendar year and to pay a percentage tax thereon. It further provided:

> "* * * and the Commissioner shall not have power to grant a renewal of the certificate of said company or association until the tax aforesaid is paid into the state treasury."

The defendant, Pennsylvania Insurance Company, received a certificate of authority to do business in New York in 1872 and from year to year thereafter until 1882. In the year 1881 the Pennsylvania company received in the State of New York premiums in an amount specified. The State of New York brought an action against the Pennsylvania company to recover the percentage tax on the premiums received by the Pennsylvania company during 1881. The State of New York contended that the Pennsylvania company should pay *as a tax* for the year 1881 the amount claimed. The Pennsylvania company claimed the benefit of the Fourteenth Amendment and contended that being in the State of New York by permission continuously from

1872 to 1882, the State of New York imposed on it while there in 1882 an unequal and unlawful burden. Neither contention was sustained. The Court in the opinion said:

> "This Pennsylvania Corporation came into the State of New York to do business, by the consent of the State, under this Act of 1853, with a license granted for a year, and has received such license annually, to run for a year. It is within the State for any given year under such license, and subject to the conditions prescribed by statute. The State, having the power to exclude entirely, has the power to change the conditions of admission at any time, *for the future*, and to impose as a condition the payment of a new tax, or a further tax, *as a license fee*."

We have hereinabove shown that the exaction under the 1919 gross premium tax law of Illinois operates as a license fee for the future, while the Oklahoma gross premium tax laws in question here and the net receipts tax law of Illinois in question in the *Hanover case* operate as a tax for the privilege previously exercised.

The Fourteenth Amendment to the Constitution of the United States went into effect in July, 1868, only eighteen years before the *Philadelphia Fire Association* case was decided. The Court in that case relied primarily upon the earlier decisions in the cases of *Paul* v. *Virginia*, 8 Wall. 168, 19 L. Ed. 357, and *Ducat* v. *Chicago*, 10 Wall. 410, 19 L. Ed. 972.

The case of *Paul* v. *Virginia* was decided November 1, 1869, approximately sixteen months after the Fourteenth Amendment became effective. *Ducat* v. *Chicago* was de-

cided January 9, 1871, approximately two and one-half years after the Fourteenth Amendment became effective. *Paul* v. *Virginia* did not involve the Fourteenth Amendment, but involved the privilege and immunities clause of of Section 2, Article IV, and the commerce clause of Section 8, Article I, of the Constitution. *Ducat* v. *Chicago,* as said in *Southern Ry. Co.* v. *Greene,* 216 U. S. 400, 54 L. Ed. 536:

> "* * * arose before the Fourteenth Amendment had become a part of the Federal Constitution, and that no reference is made in the opinion of the court to the Fourteenth Amendment, although the case was decided after that amendment went into effect."

Mr. Justice Harlan filed a strong dissenting opinion in the *Fire Association of Philadelphia* case in which he discussed *Paul* v. *Virginia* and *Ducat* v. *Chicago,* but pointed aut that the right of the states to admit foreign corporations upon such terms and conditions as they may think proper to impose is subject to the important qualification that was announced in the earlier case of *Lafayette Insurance Co.* v. *French,* 18 How. 404, 407, 15 L. Ed. 451, 453, *viz.:* Provided the terms and conditions so prescribed are not repugnant to the Constitution of the United States. That qualification, as pointed out in the dissenting opinion, had been applied in *Insurance Co.* v. *Morse,* 20 Wall. 445, 22 L. Ed. 365, to invalidate a statute of Wisconsin whereby foreign corporations before admission into the State were required to agree that suits brought against them in the state courts would not be removed to the Federal courts. The dissenting opinion further pointed out that in the light of the guaranties of the Federal Constitution there existed

no difference between the invalid Wisconsin statute involved in the *Insurance Co.* v. *Morse* case and the New York statute involved in *Fire Association of Philadelphia* v. *New York.*

(The Greene Case)

In *Southern Railway Co.* v. *Greene,* 216 U. S. 400, 54 L. Ed. 536 (1910), this Court held, quoting from the syllabus:

> "A foreign railway corporation which has come into the state in compliance with its laws, and has therein acquired property of a fixed and permanent nature, upon which it has paid all taxes levied by the state, is a person within the jurisdiction of the state, and, as such, is protected by the equal protection of the laws clause of U. S. Const., 14th Amend., against the imposition, under 1 Ala. Code. 1907, secs. 2391-2400, of an additional franchise tax for the privilege of doing business within the state, where no such tax is imposed upon domestic corporations carrying on a precisely similar business."

In the opinion in that case the Court discussed the case of *Ducat* v. *Chicago, supra,* and showed that it arose before the Fourteenth Amendment became effective. It also pointed out that the tax questioned in *Fire Association of Philadelphia* v. *New York, supra,* was levied for the future, and then said:

> "* * * we have adverted to these cases with a view of showing that the precise point involved herein is not concluded by any of them. * * * We have here a foreign corporation within a state, in compliance with

the laws of the state, which has lawfully acquired a large amount of permanent and valuable property therein, and which is taxed by a discriminating method, not employed as to domestic corporations of the same kind, carrying on a precisely similar business."

(The "Hanover Case")

In 1926, and sixteen years after this Court had found that the *Greene* case was not governed by *Ducat* v. *Chicago, supra,* and *Fire Association of Philadelphia* v. *New York, supra,* it again was asked to apply those decisions in the *Hanover case.* The *Hanover case* was decided some 58 years after the Fourteenth Amendment went into effect, and the Court was mindful of the means employed to circumvent the guaranties for equal protection of the laws as to foreign corporations licensed for one year at a time.

The defendant in error in the *Hanover case* cited and relied upon *Paul* v. *Virginia, Ducat* v. *Chicago,* and *Fire Association of Philadelphia* v. *New York* (see p. 375 of 71 L. Ed.). The unanimous opinion in the *Hanover case* expressly referred to *Paul* v. *Virginia* and *Ducat* v. *Chicago* among other cases to the same effect. It pointed out that by later decisions there had been established an important qualification to the rule announced by the former decisions, in that the State may not exact as a condition of foreign corporations engaging in business within its limits, that the rights secured to such corporations by the Constitution of the United States may be infringed. That qualification, according to the opinion in the *Hanover case,* had

been applied to different classes of cases as described in the opinion, and the Court then proceeded to apply it in the *Hanover case* where a tax or license law operated to deny to foreign corporations licensed for one year at a time the equal protection of the laws (pp. 507-508).

In the *Hanover case* this Court said:

> "In the *Greene* case the license was indefinite. In this case it must be renewed from year to year, but the principle is the same that pending the period of business permitted by the state, the state must not enforce against its licensees unconstitutional burdens" (p. 509).

In discussing the decision of the Supreme Court of Illinois, this Court in the *Hanover case* further points out that it seemed to be the view of that Court that the constitutional necessity for equal protection of the laws is avoided if the State provides that failure to comply with the law during the period or at the end of the period for which the license runs justifies a revocation of the license pending the period or a refusal to grant a new license for the following year, and then said:

> "* * * We do not think the state may thus relieve itself from granting the equal protection of its laws to a foreign company which has met the conditions precedent to its becoming a *quasi* domestic citizen. Of course at the end of the year for which the license has been granted, the state may in its discretion impose as condition precedent for a renewed license past compliance with its *valid* laws; but that does not enable the State to make past compliance with Section 30 a

condition precedent to a renewal of the license, if as we find that section violates the 14th Amendment, * * *" (p. 514).

The Court then proceeds to discuss and follow the principles announced in the *Greene* case and other cases cited, and to show that where foreign corporations are licensed for only one year at a time a tax cannot be manipulated outside the guaranties of the Fourteenth Amendment by disguising the tax as a condition precedent to renewals of the annual license (pp. 514-515). These principles were again followed by this Court in the case of *Connecticut General Life Ins. Co.* v. *Johnson*, 303 U. S. 77, 79, 80, 82 L. Ed. 673, 677.

The practice of the Insurance Comimssioner of Oklahoma, which is approved by the Oklahoma Supreme Court, in requiring the payment of the gross premium tax in question that becomes due at the end of each current license year for the privilege exercised therein, as a condition precedent to the issuance of renewal licenses, is merely an attempt to avoid the constitutional necessity for equal protection of the laws. The attempt thus to avoid the constitutional guaranties of the Fourteenth Amendment is just as clear in the instant case as it was in the *Hanover case*. It was not permitted in the *Hanover case* and should not be permitted in the instant case.

(The Shaffer Oil & Refining Company Case)

In *Sneed* v. *Shaffer Oil & Refg. Co.* (C. C. A. 8), 35 Fed. (2d) 21 (1929), the Court had under consideration

the Oklahoma statute enacted in 1927, which imposed a license fee upon domestic corporations of 50c for each $1,000.00 of its authorized capital stock, or less, and a license fee upon foreign corporations of $1.00 for each $1,000.00 of their capital invested in their businesses in Oklahoma. The opinion points out that both domestic and foreign corporations were by Section 9947, Comp. Stat. of Okla. 1921, required to procure a license for one year at a time and pay the license fee prescribed, and that the Act of 1927 amended that statute only by prescribing the license fee above set forth; that Section 9952, Comp. Stat. of Okla 1921, defines the license year for which said tax is paid as commencing July 1 and expiring June 30 next thereafter. In holding that the tax there in question denied to foreign corporations the equal protection of the laws under the Fourteenth Amendment the Court quoted from the opinion in the *Hanover case* and the case of *Southern Ry. Co.* v. *Greene*, 216 U. S. 400, 54 L. Ed. 536. Although the *Shaffer Oil & Refining Company* case involved a tax law that applied to foreign corporations licensed in Oklahoma for only one year at a time, it apparently was not considered by the Oklahoma Supreme Court in deciding the instant case.

IV.

The Gross Premium Tax Laws of Oklahoma deny to appellant the equal protection of the laws in violation of the Fourteenth Amendment. Payment of the invalid tax imposed by such laws cannot be made a valid condition precedent to the issuance of renewal licenses.

The first two paragraphs of Section 2, Article XIX of the Oklahoma Constitution (*Appendix, p. i*), require foreign insurance companies to pay the entrance fees therein prescribed. The title "Entrance Fees" refers to those paragraphs. By the last paragraph of the section the premium tax is imposed and the title "Annual Tax" refers to that paragraph, which in content stands alone to the same extent as though it were embodied in a separate section. In grammatical construction it is in no manner dependent upon or related to the preceding two paragraphs dealing with the entrance fee. In fact, its requirements could not operate or apply until after the foreign insurance company had paid the entrance fee provided by the preceding paragraphs, received its license, and carried on its business. Insurance premiums against which the tax paragraph applies could not conceivably be collected in the State until after the foreign insurance company had received its license to do business. It is clear that the State by the provisions contained in the second paragraph of said Section 2 intended that the foreign corporation be admitted into the State and receive its license upon payment of the fee stipulated ($25.00 to $200.00, depending on the type of company), and that thereafter the tax prescribed by the third

paragraph should apply to the business done. That the framers of the Constitution considered the exaction imposed on gross premiums by the last paragraph of said Section 2 as a revenue and tax measure, as distinguished from the fee prescribed by the preceding paragraph, is borne out in Section 3, Article XIX of the Oklahoma Constitution (*Appendix, p. ii*), where certain companies are exempted from "the revenue and tax provisions of this Constitution." Had the Legislature intended to make the exaction operate as a fee or condition precedent rather than as a tax it would have been very simple to make provision therefor as did the 1919 gross premium tax law of Illinois.

The Oklahoma Supreme Court in construing the gross premium statutes here in question cited with approval and quoted from the recent case of *Pacific Mut. Life Ins. Co. v. Hobbs* (1940), 152 Kan. 230, 103 Pac. (2d) 854 (R. 57, 58). Although the Federal question here was not involved in that case, the Kansas Court conceived the distinction which we have hereinabove pointed out between fees paid as a condition precedent and a tax applying after admission. The Kansas Court held:

> "The tax on gross premiums received by foreign insurance companies for business done in the state is an 'excise tax' in the nature of a franchise or privilege tax on the privilege of doing business, and partakes of the nature of a license tax in the sense that payment thereof is required *as a condition precedent to the renewal* of certificates of authority of such companies."

In the opinion the Court pointed out that otherwise:

> "* * * a foreign company coming into the state would be exempt from taxation upon the business done in the first year, if it withdrew at the end of the first year."

In the case of *New York Life Ins. Co.* v. *Board of County Com'rs,* 155 Okla. 247, 9 Pac (2d) 936, the Oklahoma Supreme Court held that the gross premium tax was not in lieu of *ad valorem* taxes and said, quoting from other authorities:

> "'* * * *A tax law imposing a percentage on premiums of a foreign insurance company is a tax on the business,* * * *'"*

We have hereinabove shown that by the manner in which the discriminatory tax in question operates, it is in effect the same type of tax law and possesses the same constitutional defects as found in the net receipts tax law condemned in the *Hanover case,* and to which reference is there made where this Court said:

> "Tax laws made to apply *after* it has been so received into the state are to be considered laws enacted for the purpose of raising revenue for the state and *must conform to the equal protection clause of the 14th Amendment*" (p. 515).

The revenue purpose of the Oklahoma gross premium tax is further shown by Section 2 of the Oklahoma 4% gross premium tax act of 1941, where 50% of the tax col-

lected from fire insurance companies is allocated to the Firemen's Relief and Pension Fund of the State, and the balance to the General Fund of the State (*Appendix, p. xiii*).

It is obviously the view of the Oklahoma Supreme Court that the constitutional necessity for equal protection of the laws is avoided under the Oklahoma gross premium tax law in question by following the theory that failure to pay the tax that is exacted at the end of the annual period for which the license runs justifies a refusal to grant a renewal license for the following license year. If it may be said that this Court in the *Philadelphia Fire Association* case adopted any such theory, it has refused to adhere thereto in later cases, as may be observed from its opinion in the *Hanover case* [our Proposition III(B)].

If the tax here in question were not discriminatory, the State of course could employ the payment thereof as a valid condition precedent to the issuance of renewal licenses, but the *Hanover case*, as we have shown, holds that a state cannot make past compliance with a tax law which violates the Fourteenth Amendment, a condition precedent to a renewal of the license.

CONCLUSION

In conclusion, we desire to point out that if domestic insurance companies of Oklahoma were also subjected to the tax law here in question, or if the rate of the tax imposed solely against foreign insurance companies resulted in foreign and domestic insurance corporations sharing fairly equivalent tax burdens, no complaint would be justified under the equal protection clause of the Fourteenth Amendment.

The *Hanover case* does not permit speculation as to whether the State in dealing with foreign corporations violates the equal protection clause of the Federal Constitution. Disguise and manipulation by the State and its administrators should not be countenanced, for, as stated in the case of *Marion L. Frost et al.* v. *Railroad Comm. of the State of California, supra,* the guaranties of the Federal Constitution could in that manner be manipulated out of existence.

The tax law in question is a form of unconstitutional discrimination, the vicious nature of which was sensed fully by Mr. Justice BRADLEY in the minority opinion in *Doyle* v. *Continental Ins. Co.*, 94 U. S. 535, 24 L. Ed. 148 (such minority opinion expressing the view which was later adopted by this Court). In that case Mr. Justice BRADLEY says:

> "The conditions of society and the modes of doing business in this country are such that a large part of its transactions is conducted through the agency of

corporations. This is especially true with regard to the business of banking, insurance and transportation. Individuals cannot safely engage in enterprises of this sort, requiring large capital. They can only be successfully carried out by corporations, in which individuals may safely join their small contributions without endangering their entire fortunes. To shut these institutions out of neighboring states would not only cripple their energies, but would deprive the people of those states of the benefits of their enterprise. The business of insurance, particularly, can only be carried on with entire safety by scattering the risks over large areas of territory, so as to secure the benefits of the most extended average. The needs of the country require that corporations, at least those of a commercial or financial character, should be able to transact business in different states. If these states can, at will, deprive them of the right to resort to the courts of the United States, then, in large portions of the country, the Government and laws of the United States may be nullified and rendered inoperative with regard to a large class of transactions constitutionally belonging to their jurisdiction.

"The whole thing, however free from intentional disloyalty, is derogatory to that mutual comity and respect which ought to prevail between the State and General Governments, and ought to meet the condemnation of the courts whenever brought within their proper cognizance."

By following the same line of reasoning employed in the above quotation from the opinion in *Doyle* v. *Continental Insurance Co., supra*, it may be said that if the states can limit the period of admission of foreign insurance corporations to one year at a time, and then, as a

condition precedent to the annual readmission, deal arbitrarily with such foreign corporations, the guaranties of the Federal Constitution would be avoided. Under such practice the foreign corporation may in reality be within the limits of the State for many years but at all times subject to discrimination in favor of similar domestic corporations. That should be just as offensive as the situations dealt with in the class of cases considered in the opinion in the *Hanover case*. A state should not be presumed to have limited the admission of foreign corporations into the State to a definite period in the absence of clear and express language to that effect. But where it is found that the State so intended, the practice should meet with condemnation from this Court.

The requirements of the Oklahoma law that domestic as well as foreign insurance companies obtain annual licenses is a proper regulation of the business. But we fail to see how such requirements can fairly be interpreted as limiting the period of admission of foreign insurance companies to the period of each annual license.

Whether foreign corporations are admitted into Oklahoma for an indefinite period or for one year at a time, the tax law here in question applies a discriminatory tax after the issuance of each annual license, and cannot constitute a valid condition precedent either to an annual admission or the renewal of the annual license.

We respectfully submit that under the construction by the Supreme Court of Oklahoma the statutes, the judgment

here under review, and the tax exaction and imposition merged therein, are repugnant to the guaranties of the Fourteenth Amendment, and that the judgment should be reversed.

Respectfully submitted,

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March, 1945.

APPENDIX

TEXT OF OKLAHOMA CONSTITUTION AND STATUTES CHRONOLOGICALLY ARRANGED

PROVISIONS OF CONSTITUTION OF OKLAHOMA

Sections 1, 2 and 3 of Artiele XIX of the Constitution of Oklahoma read as follows:

"1. FOREIGN INSURANCE COMPANIES—CONDITIONS OF DOING BUSINESS.

"No foreign insurance company shall be granted a license or permitted to do business in this State until it shall have complied with the laws of the State, including the deposit of such collateral or indemnity for the protection of its patrons within this State as may be prescribed by law, and shall agree to pay all such taxes and fees as may at any time be imposed by law or act of the Legislature, on foreign insurance companies, and a refusal to pay such taxes or fees shall work a forfeiture of such license.

"2. ENTRANCE FEES—ANNUAL TAX.

"Until otherwise provided by law, all foreign insurance companies, including surety and bond companies, doing business in the State, except fraternal insurance companies, shall pay to the Insurance Commissioner for the use of the State, an entrance fee as follows:

"Each foreign Life Insurance Company, per annum, two hundred dollars; each Foreign Fire Insurance Company, per annum, one hundred dollars; each For-

eign Accident and Health Insurance Company, jointly, per annum, one hundred dollars; each Surety and Bond Company, per annum, one hundred and fifty dollars; each Plate Glass Insurance Company (not accident), per annum, twenty-five dollars; each foreign live stock insurance company, per annum, twenty-five dollars.

"Until otherwise provided by law, domestic companies excepted, each insurance company, including surety and bond companies, doing business in this State, shall pay an annual tax of two per centum on all premiums collected in the State, after all cancellations are deducted, and a tax of three dollars on each local agent.

"3. NON-PROFIT INSURANCE ORGANIZATIONS.

"The revenue and tax provisions of this Constitution shall not include, but the State shall provide for the following classes of insurance organizations not conducted for profit, and insuring only their own members:

"First, farm companies insuring farm property and products thereon; second, Trades Insurance Companies insuring the property and interest of one line of business; third Fraternal Life, Health, and Accident Insurance in Fraternal and Civic Orders, and in all of which the interests of the members of each respectively shall be uniform and mutual."

GENERAL INSURANCE ACT OF 1909

(Chapter 21, Article 1, page 312, Session Laws of Oklahoma 1909, approved March 17, 1909.)

"A Bill Entitled an Act Relating to Insurance * * *."

Sec. 5—(Sec. 8, Tit. 36, Okla. Stat. 1941—BUSINESS LIMITED BY CERTIFICATE—OTHER RESTRICTIONS ON BUSINESS CARRIED ON):

"No company shall be formed in this State or foreign company admitted to this State, for the purpose of engaging in any kind of insurance other than that specified in its certificate of incorporation, original or amended, nor any kind of business except that allowed domestic corporations under this act."

Sec 11—(Sec. 47, Tit. 36, Okla. Stat. 1941—CERTIFICATES ISSUED—COMMISSIONER TO EXAMINE FIRST—BOOKS AND RECORDS):

"Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance, the Insurance Commissioner shall be satisfied, by such examination as he may make and such evidence as he may require, that such company is otherwise duly qualified under the laws of the State to transact business herein."

Sec. 12—(Sec. 48, Tit. 36, Okla. Stat. 1941—PROVIDES FOR EXAMINATION AND AUDIT OF FOREIGN COMPANIES.

Sec. 13—(Sec. 49, Tit. 36, Okla. Stat. 1941—EXAMINATION AND AUDIT OF FOREIGN COMPANIES):

"Whenever the Insurance Commissioner deems it prudent for the protection of the policy holders of this

State, he shall, in like manner, visit and examine or cause to be visited and examined by some competent person or persons whom he may appoint for that purpose, any foreign insurance company applying for admission or already admitted to do business in this State."

Sec. 15—(Sec. 51, Tit. 36, Okla. Stat. 1941—FOREIGN COMPANIES' AUTHORITY REVOKED, WHEN—MANNER):

"If the Insurance Commissioner is of the opinion, upon examination or other evidence, that any foreign insurance company is in an unsound condition or has failed to comply with the law or with the provisions of its charter or that its condition is such as to render the proceedings hazardous to the public or to its policy holders or that its actual funds, exclusive of capital stock, are less than its liabilities, or if it or its officers, directors, trustees or agents refuse to submit to an examination or to perform any legal obligation relative thereto or fail to pay any final judgment against it by a citizen of this State, he shall revoke or suspend all certificates of authority granted to it or its agents and shall cause notification thereof to be published in one or more newspapers of general circulation in the State, and no new business shall thereafter be done by it or its agents in this State while such default or disability continues, nor until its authority to do business is restored by the Insurance Commissioner; provided, however, that unless the ground for revocation or suspension relates only to the financial condition or the soundness of the company or to a deficiency in its assets, he shall notify the company, not less than ten days before revoking its authority to do business in this State, and he shall specify in the notice the particulars of the supposed violation."

Sec. 18, as amended, being Sec. 101, Tit. 36, Okla. Stat. 1941—(FOREIGN INSURANCE COMPANIES—CONDITIONS OF ADMISSION TO DO BUSINESS):

"No foreign insurance company shall be admitted and authorized to do business in this State until:

"First: It shall file or deposit with the Insurance Commissioner a properly certified copy of its charter, or deed of settlement, and a statement of its financial condition and business on the thirty-first day of December preceding the day on which it shall apply for permission to transact such business, including such other information and in such form and detail as the Insurance Commissioner may require, signed and sworn to by its president and secretary and other proper officers.

"Second: It shall satisfy the Insurance Commissioner that it is fully and legally organized under the laws of its State or Government to do the business it proposes to transact in this State; that, if a life insurance company, a surety company or a bond company, it has on deposit with the Treasurer of this State or with the proper officer of some other state, securities to the actual cash value of at least one hundred thousand dollars consisting of the bonds of this State, the United States, or the state in which such company is organized, or notes or bonds secured by mortgages on improved real estate worth double the amount of such notes or bonds, and such company shall file with the Insurance Commissioner the certificate of the official with whom its securities are deposited stating the time and amount of each of said bonds, notes or stocks, and that he is satisfied that they are worth one hundred thousand dollars, and that the deposit is made with him by the company for the protection of all its policy

holders and creditors in the United States. Provided, that surety and bond companies shall be required to have not less than four hundred thousand dollars paid up capital in cash or invested in such securities as, under the laws of this State, domestic companies are allowed to invest in, which are satisfactory to the Insurance Commissioner.

"Third: Insurance companies, other than surety and bond companies, shall be required to have a paid up capital or guaranty capital or surplus of not less than one hundred thousand dollars in cash or invested in securities satisfactory to the Insurance Commissioner and consisting of such securities as under the laws of this State, domestic companies are allowed to invest in; provided, however, that the funds of such foreign insurance companies in excess of such minimum of one hundred thousand dollars may at all times be invested in such securities as are or may be authorized by the laws of the state in which such companies are organized or in which they have and maintain their United States deposit. Nothing in this section shall be construed to permit the admission of mutual companies other than as provided in Section 3 of this Act, except fraternal and benevolent orders and societies.

"Fourth: It shall, by duly executed instrument filed in his office, constitute and appoint the Insurance Commissioner, or his successor, its true and lawful attorney, upon whom all lawful processes in any action or legal proceeding against it may be served and therein shall agree that any lawful process against it, which may be served upon its said attorney, shall be of the same force and validity as if served upon the company, and that the authority thereof shall continue in force,

irrevocable, as long as any liability of the company remains outstanding in this State. Any process issued by any court of record in this State, and served upon such Commissioner by the proper officer of the county in which said Commissioner may have his office, shall be deemed a sufficient process on said company, and it is hereby made the duty of the Insurance Commissioner to promptly, after such service of process, forward by registered mail, an exact copy of such notice to the company; or, in case the company is of a foreign country, to the resident manager in this country; and also shall forward a copy thereof to the general agent of said company in this State. For power of attorney, each company shall pay a fee of three dollars, and for each copy of the process, the Insurance Commissioner shall collect the sum of three dollars, which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as a part of the taxable cost, if he prevails in his suit (R. L. 1910, Secs. 3421, 3422; Laws 1910-11, ch. 93, p. 203, Sec. 1; Laws 1925, ch. 131, p. 196, Sec. 1)."

Sec. 21—(Sec. 56, Tit. 36, Okla. Stat. 1941—ANNUAL STATEMENT BY COMPANIES—ANNUAL LICENSE):

"The Insurance Commissioner shall, in December of each year, furnish to each of the insurance companies, authorized to do business under the provisions of this act, two or more blanks in form adopted for their annual statement, and such companies shall, annually, on or before the last day of February, file in the office of the Insurance Commissioner a statement which shall exhibit its financial condition on the 31st day of December of previous year and its business of that year. For good cause shown, the Commissioner may extend the time within which such statement may be filed.

Every such annual statement shall be in the form and of the specifications the Insurance Commissioner may require. The assets and liabilities shall be computed and allowed in accordance with the laws of this State. Such statement shall be subscribed and sworn to by the president and secretary and other proper officers. And if the Insurance Commissioner finds that the facts warrant, and that all laws applicable to said company are fully complied with, he shall issue to said company a license or certificate of authority, subject to all requirements and conditions of the law, to transact business in this State, specifying in said certificate the particular kind or kinds of insurance it is authorized to transact, and said certificate shall expire on the last day of February next after its issue. The annual statement of a company of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its American business."

Sec. 22, as amended, being Sec. 10478, Okla. Stat. 1931—(FOREIGN COMPANIES—ANNUAL REPORT OF PREMIUMS—FEES AND TAXES):

"Every foreign insurance company doing business in this State under the provisions of this article shall, annually, on or before the last day of February, report under oath of the president or secretary or other chief officer of such company to the Insurance Commissioner, the total amount of gross premiums received in this State within the twelve months next preceding the first of January or since the last return of such premiums was made by such company; and shall at the same time pay to the Insurance Commissioner an entrance fee as provided by Article XIX of the Constitution of the State of Oklahoma, and an annual tax of

two per cent on all premiums collected in this State, after all cancellations and dividends to policy holders are deducted, and an annual tax of three dollars on each local agent, and such other fees as may be paid to said Insurance Commissioner, which taxes shall be in lieu of all other taxes or fees, and the taxes and fees of any subdivision or municipality of the State. Any company failing to make such returns and payments promptly and correctly shall forfeit and pay to the Insurance Commissioner, in addition to the amount of said taxes, the sum of five hundred dollars; and the company so failing or neglecting for sixty days shall thereafter be debarred from transacting any business of insurance in this State until said taxes and penalties are fully paid, and the Insurance Commissioner shall revoke the certificate of authority granted to the agent or agents of that company to transact business in this State.

[THIS SECTION WAS AMENDED BY Sec. 1, ch. 1a., Tit. 36, Session Laws of Oklahoma, 1941, *infra*. (Tit. 36, Okla. Stat. 1941, Sec. 104) WHICH INCREASED THE RATE OF THE TAX TO 4%.]

Sec. 25, at amended, being Sec. 121, Tit. 36, Okla. Stat. 1941—(AGENTS—LICENSE OF AGENTS):

"Upon written notice by an authorized foreign insurance company of its appointment of a suitable person to act as its agent within this State, and the payment of three dollars, the Insurance Commissioner shall, if the facts warrant it, grant to such person a license, which shall state in substance that the company is authorized to do business in this State and that the person named therein is a constituted agent of the company for the transaction of such business as

it is authorized to do in this State: Provided, that domestic insurance companies shall pay fifty cents, only, for each agent's license. Said license shall continue in force until the last day of February next after its issue, and, by the renewal thereof, on the annual payment for such renewal of three dollars, if a foreign company, and if a domestic company, on the annual payment of fifty cents, until revoked by the Insurance Commissioner for non-compliance with the laws or until the company, by written notice to the Insurance Commissioner, cancels the agent's authority to act for it. While such license remains in force, the company shall be bound by the acts of the person named therein within his authority as its acknowledged agent (R. L. 1910, Sec. 3429)."

Sec. 26, as amended, being Sec. 122, Tit. 36, Okla. Stat. 1941—(VIOLATION BY AGENT A MISDEMEANOR—PENALTY):

"Whoever shall, directly or indirectly, aid in transacting insurance business for any such company without first receiving such certificate of authority, or after receiving from such Insurance Commissioner notice of the revocation thereof continue to act as agent for any such company, shall be deemed to be guilty of a misdemeanor, and upon conviction by a court having jurisdiction, be fined not less than one hundred dollars nor more than five hundred dollars; the issuance of each policy or contract shall constitute a separate and distinct offense (R. L. 1910, Sec. 3430)."

Sec. 29, as amended, being Sec. 124, Tit. 36, Okla. Stat. 1941—(PERSONAL LIABILITY OF AGENT—UNLAWFUL CONTRACT):

"Every agent or other person shall be personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for or on behalf of any insurance company not authorized to do business in this State (R. L. 1910, Sec. 3432)."

Sec. 31—(Sec. 126, Tit. 36, Okla. Stat. 1941—RESIDENT AGENTS FOR FOREIGN COMPANIES—EXCEPTIONS):

"Foreign companies admitted to do business in this State shall make contracts of insurance upon lives, property or interests herein, only through lawfully constituted and licensed resident aegnts: * * *"

Sec. 61, as amended, being Sec. 199, Tit. 36, Okla. Stat. 1941—(GENERAL AGENCY IN STATE REQUIRED):

"All life insurance companies doing business under the laws of this State shall be required to maintain a general agency within the State, in charge of a resident general agent (R. L. 1910, Sec. 3464)."

OKLAHOMA 4% GROSS PREMIUM TAX ACT OF 1941

(Chapter 1a, Title 36, pp. 121, 122, Session Laws of Oklahoma 1941.)

"AN ACT amending Section 10478 and Section 10479, Oklahoma Statutes, 1931; providing for an annual tax of four per cent (4%) on all premiums collected in this State, with certain deductions to be paid by all foreign insurance companies doing business in

the State of Oklahoma; extending the provisions of such statute to include every foreign corporation, co-partnership, association, inter-insurance exchange or individual who is a non-resident of the State of Oklahoma, doing an insurance business of any nature whatsoever; and providing for the distribution and appropriation of such taxes; and declaring an emergency.

"BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

"REPORTS—GROSS PREMIUMS.

"Section 1. That Section 10478, Oklahoma Statutes of 1931 be and is hereby amended to read as follows:

" 'Every foreign insurance company, co-partnership, association, inter-insurance exchange or individual who is a non-resident of the State of Oklahoma, doing business in the State of Oklahoma in the execution of exchange contracts of indemnity, or as an insurance company of any nature or character whatsoever, shall, annually, on or before the last day of February, report under oath of the president or secretary or other chief officer of such company to the Insurance Commissioner, the total amount of gross premiums received in this State within the twelve months next preceding the first of January, or since the last return of such premiums was made by such company; and shall, at the same time, pay to the Insurance Commissioner an entrance fee as provided by Article XIX of the Constitution of the State of Oklahoma, and an annual tax of four per cent (4%) on all premiums collected in this State, after all cancellations and dividends to policy holders are deducted, which tax, in addition to an annual tax of three dollars ($3.00) on each agent, to be paid to the State Insurance Board as now provided by Section 10542, Oklahoma Statutes, 1931, shall

be in lieu of all other taxes or fees, and the taxes and fees of any sub-division or municipality of the State. Any company failing to make such returns and payments promptly and correctly shall forfeit and pay to the Insurance Commissioner, in addition to the amount of said taxes, the sum of five hundred dollars ($500.00); and the company so failing and neglecting for sixty days shall thereafter be debarred from transacting any business of insurance in this State until said taxes and penalties are fully paid, and the Insurance Commissioner shall revoke the certificate of authority granted to the agent or agents of that company to transact business in this State' (Tit. 36, Sec. 104, Okla. Stat. 1941).

"REPORT AND DISBURSEMENT.

"Section 2. That Section 10479, Oklahoma Statutes, 1931, be and is hereby amended to read as follows:

"'The Insurance Commissioner shall report and disburse all taxes collected under Section 1 hereof and the same are hereby appropriated as follows, to-wit:

"'(a) One-half or fifty (50%) per cent of the four (4%) per cent collected on all premiums by fire insurance companies in this State, shall be allocated and disbursed for the fireman's relief and pension fund as provided for in Sections 6110, 6111, 6112, and 6113 of the Oklahoma Statutes, 1931.

"'(b) All the balance and remainder of the annual tax of four (4%) per cent provided for in Section 1 hereof shall be paid to the State Treasurer to the credit of the General Fund of the State.

"'The Insurance Commissioner shall keep an accurate record of all such funds and make an itemized statement and furnish same to the State Auditor, as

do other departments of this State. The report shall be accompanied by an affidavit of the Insurance Commissioner or the chief clerk of his office certifying to the correctness thereof. Provided that nothing herein shall be construed as repealing or affecting the provisions of Section 3744 of the Oklahoma Statutes, 1931' (Tit. 36, Sec. 57, Okla. Stat. 1941).

"Approved April 25, 1941. Emergency."

ILLINOIS PREMIUM TAX ACT OF 1919

(Act of June 28, 1919, ch. 73, Cahill's Rev. Stat. of Illinois, 1925.)

"An Act in Relation to the Taxation of Non-Resident Corporations, Companies, and Associations for the Privilege of Doing an Insurance Business in this State.

"Section 1. BE IT ENACTED BY THE PEOPLE OF THE STATE OF ILLINOIS, REPRESENTED IN THE GENERAL ASSEMBLY: That each non-resident corporation, company, and association licensed and admitted to do an insurance business in this State shall, except as herein otherwise provided, pay an annual state tax for the privilege of doing an insurance business in this State, equal to two per centum of the gross amount of premiums received during the preceding calendar year * * *.

* * * * * * * * * *

"Section 6. * * * the tax herein provided to be paid shall be due and payable on the first day of July of each year, and shall be the tax for the year commencing on the first day of July in which it is due and ending on the thirtieth day of June next thereafter.

* * * * * * * * * *

"Section 9. On or before the fifteenth day of May of each year, the Department of Trade and Commerce shall mail a notice in writing to each corporation, company, and association against which a tax is assessed, stating the amount of the tax assessed against it for the year next ensuing commencing on July 1 * * *. Such notice shall further state that the tax therein assessed is payable to the Department of Trade and Commerce on July 1, after the date of said notice.

* * * * * * * * *

"Section 13. Each corporation, company, or association applying for a license to do an insurance business in this State, and which was not licensed to do such business in this State during the preceding calendar year, or any part thereof, shall, before said license is issued, pay to the Department of Trade and Commerce at the rate of three hundred dollars per annum for as many months as will elapse between the date of issuance of such license and the first day of July of the calendar year succeeding the calendar year in which such license is issued, and such payment shall be for the privilege of doing an insurance business in this State, during the period aforesaid.

* * * * * * * * *

"Section 15. The authority of each non-resident corporation, company, and association, admitted to do an insurance business in this State, shall be evidenced by a license to be issued by the Department of Trade and Commerce, in which shall be stated the kind or kinds of insurance business authorized to be transacted. All licenses issued by virtue of the provisions hereof shall terminate on the thirtieth day of June next after the date thereof, and may be renewed annually thereafter upon compliance with the laws of this State. * * *"